FILED
JUN - 1 1994
OFFICE OF THE CLERK

No. 93-1522

In the Supreme Court of the United States

OCTOBER TERM, 1993

DANIEL JOSEPH MARAVILLA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General

DEVAL L. PATRICK
Assistant Attorney General

JESSICA DUNSAY SILVER
LISA J. STARK
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether the district court abused its discretion in denying petitioners' motion for a new trial based on newly discovered evidence.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	6
Conclusion	12

TABLE OF AUTHORITIES

Cases:

Brady v. *Maryland*, 373 U.S. 83 (1963)	8
Larrison v. *United States*, 24 F.2d 82 (7th Cir. 1928)	7
Mesarosh v. *United States*, 352 U.S. 1 (1956)	6, 11
Ouimette v. *Moran*, 942 F.2d 1 (1st Cir. 1991)	6, 8, 9, 10
United States v. *Agurs*, 427 U.S. 97 (1976)	9
United States v. *Bagley*, 473 U.S. 667 (1985)	10
United States v. *Cardarella*, 588 F.2d 1204 (8th Cir. 1978)	6
United States v. *Hamilton*, 559 F.2d 1370 (5th Cir. 1977)	7
United States v. *Lau*, 828 F.2d 871 (1st Cir. 1987), cert. denied, 486 U.S. 1005 (1988)	8
United States v. *Maravilla*:	
907 F.2d 216 (1st Cir. 1990), cert. denied, 112 S. Ct. 1960 (1992)	2, 3, 4, 9
951 F.2d 412 (1st Cir. 1991)	4
United States v. *Nace*, 561 F.2d 763 (9th Cir. 1977)	6-7
United States v. *Winter*, 663 F.2d 1120 (1st Cir. 1981), cert. denied, 460 U.S. 1011 (1983)	6
Wisniewski v. *United States*, 353 U.S. 901 (1957)	9

Statutes and rule:

18 U.S.C. 242	2, 4
18 U.S.C. 1001	2
18 U.S.C. 1503	2
18 U.S.C. 1623	2

Statutes and rule—Continued: Page

18 U.S.C. 1951(a) 2
18 U.S.C. 2314 2
18 U.S.C. 2315 2
Fed. R. Crim. P. 33 4
Fed. R. Evid. 608(b) 6

In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 93-1522

DANIEL JOSEPH MARAVILLA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A3) is unpublished, but the decision is noted at 7 F.3d 219 (Table). The opinion of the district court (Pet. App. B1-B27) is not reported. Prior opinions of the court of appeals are reported at 951 F.2d 412 and 907 F.2d 216.

JURISDICTION

The judgment of the court of appeals was entered on September 28, 1993. Pet. App. A4. A petition for rehearing was denied on November 16, 1993. Pet. App. C1. The petition for a writ of certiorari was filed on February 14, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners, who were special agents with the United States Customs Service, were indicted for various federal offenses as a result of their having abducted, robbed, and murdered Yamil Mitri Lajam, a citizen of the Dominican Republic. Following a jury trial in the United States District Court for the District of Puerto Rico, petitioners were convicted of depriving an inhabitant of the United States of his civil rights, in violation of 18 U.S.C. 242; robbery, in violation of 18 U.S.C. 1951(a); receiving and transporting stolen money, in violation of 18 U.S.C. 2314 and 2315; and making false statements and obstruction of justice, in violation of 18 U.S.C. 1623, 1001, and 1503. The court of appeals reversed their convictions on the Section 242 count, affirmed their convictions on all other counts, and remanded to the district court for resentencing. In the district court, petitioners moved for a new trial on the ground of newly discovered evidence. The district court denied their motion, and the court of appeals affirmed.

1. The evidence at trial showed that, on the morning of September 10, 1982, Mitri, a Dominican citizen who managed a money exchange business, flew to Puerto Rico carrying approximately $700,000. Unbeknownst to anyone other than his employer, Mitri planned to go directly from the airport to a bank in downtown San Juan to deposit the money. At the San Juan airport, Mitri proceeded to the United States Customs Office, declared the money he was carrying, and was interviewed by petitioners. *United States* v. *Maravilla*, 907 F.2d 216, 217-218 (1st Cir. 1990), cert. denied, 112 S. Ct. 1960 (1992).

After the interview, Mitri left the customs office with petitioner Dominguez. Mitri was never seen alive again. Dominguez was not seen at the customs office for four to

five hours after departing with Mitri. Petitioner Maravilla also left the customs office around the same time. He too was not seen again the rest of the day. 907 F.2d at 217-218.

Mitri's decomposed body was found ten days later about 20 miles from the airport. 907 F.2d at 217-218. Two forensic pathologists testified at petitioners' trial. Dr. Joseph Davis testified that Mitri's decomposed body was in a state consistent with his having been shot during the five hours that both Dominguez and Maravilla were away from the customs office on September 10. *Id.* at 219-220. Another forensic pathologist, Dr. Ralph Criado, testified that the victim's date of death was between September 8 and 12. *Id.* at 219.

On September 10, the date Mitri disappeared, Dominguez and Maravilla each had less than $100 in the bank. Beginning on September 10, both petitioners had large quantities of cash. On the night Mitri disappeared, they purchased first-class plane tickets with cash and flew to Miami carrying a brief case filled with approximately $265,000 in cash. In Miami, they paid Wayne Sausmer $12,000 to deposit the money in numbered, unnamed Swiss bank accounts. Shortly thereafter, Dominguez gave a girlfriend $7000 in cash, bought $3500 in postal money orders, had a friend deposit $5000 in a Miami bank account, and gave an uncle $15,000 to buy a car. In February, 1982, Dominguez agreed to make a cash down payment of $30,000 for a new house. Meanwhile, Maravilla deposited $18,300 cash in a bank account in San Juan, gave $2000 to his parents, and was detained by authorities in Baranquilla, Columbia, for failing to declare $53,700 in cash that he was carrying. 907 F.2d at 218-219.

Petitioners provided several false stories to customs agents, the FBI, and/or the grand jury as to the source of

the money. Sausmer, following petitioners' advice, initially did the same, but eventually told the FBI, the grand jury, and the trial jury that petitioners' stories about the cash were all false. 907 F.2d at 218-219.

Dominguez's girlfriend, Debra Placey, also testified that, on the weekend of September 17, Dominguez gave her a gun and asked her to take it to a gun shop and have the barrel removed and returned to him. 907 F.2d at 219, 221. Jose Gonzales, the owner of the gun shop, confirmed Placey's testimony, and records of the gun shop were introduced as further confirmation. Pet. App. B11; *United States* v. *Maravillla*, 907 F.2d at 221.

2. On January 28, 1990, the court of appeals affirmed in part and reversed in part, and remanded to the district court for resentencing. 907 F.2d at 216. The court of appeals held that the evidence was sufficient as to all counts, but concluded that petitioners could not be convicted of a violation of 18 U.S.C. 242, because the victim, a foreigner who intended to visit the United States for only a few hours, was not an "inhabitant" within the meaning of the statute. 907 F.2d at 219, 228.

3. On remand, the district court sentenced each defendant to 50 years' imprisonment and a fine of $30,000. The court of appeals affirmed petitioners' sentences. *United States* v. *Maravilla*, 951 F.2d 412, 414 (1st Cir. 1991). This Court denied a writ of certiorari. 112 S. Ct. 1960 (1992).

4. Petitioners filed a motion for a new trial pursuant to Fed. R. Crim. P. 33, based on newly discovered evidence. Pet. App. B3. Petitioners argued, *inter alia*, that they were entitled to a new a trial because the government intentionally withheld information that (1) gun shop owner Jose Gonzalez had previously testified falsely at a New Jersey state proceeding about his own illegal activities while a police officer for the Dade

County Police Department, and (2) Dr. Ralph Criado, a pathologist and government witness, had falsified an autopsy report in another case. Pet. App. B5, B15.

The district court denied petitioners' motion without a hearing. With regard to the newly discovered evidence concerning Gonzalez, the district court rejected petitioners' claim that the government impermissibly withheld any information. Pet. App. B6-B7, B9-B10. The district court found that petitioners "have not demonstrated the existence of any mis-conduct" and "[t]here is simply no evidence in the record that any prosecutors in this case learned of the criminal activities and investigation of Gonzalez from federal or local authorities in Miami." Pet. App. B9-B10. The court also concluded that such evidence did not provide a basis for a new trial because it would have been "unlikely to produce a reversal." Pet. App. B13. In support of that conclusion, the court found that Gonzalez's testimony in this case was: (1) "largely cumulative"; (2) truthful, as evidenced by the fact that it was "corroborated by independent offers of proof"; (3) nonessential, since even "[w]ithout Gonzalez's testimony there remain[ed] sufficient evidence for a conviction"; and (4) unrelated to his false testimony at a proceeding in New Jersey. Pet. App. B13, B11.

The district court also rejected petitioners' claim that newly discovered evidence that Dr. Criado had falsified an autopsy report in another case justified a new trial. Pet. App. B14-B16. The court reasoned that a new trial was not warranted because: (1) "there has been no showing that presentation of this evidence would probably produce an acquittal"; (2) "the allegations make no suggestion that Dr. Criado perjured himself or falsified documents in connection with the autopsy he performed in this case"; and (3) the newly discovered

evidence was inadmissible extrinsic evidence of credibility under Fed. R. Evid. 608(b) and would have been of "negligible" effectiveness if used on cross-examination of Criado. Pet. App. B15.

5. The court of appeals affirmed, "essentially for the reasons stated in * * * the [district] court's opinion and order." Pet. App. A1-A2. The court of appeals also wrote a brief opinion denying petitioners' request for rehearing and suggestion for rehearing en banc. Pet. App. C1. Applying *Ouimette* v. *Moran*, 942 F.2d 1, 11 (1st Cir. 1991), it held that even if the government impermissibly withheld evidence regarding Gonzalez, petitioners would not be entitled to a new trial because there is "no reasonable possibility that the jury * * * would have acquitted them if Jose Gonzalez's credibility had been impeached. Even without Gonzalez's testimony, ample evidence was introduced at trial to support petitioners' convictions." Pet. App. C3. The court of appeals also held that *Mesarosh* v. *United States*, 352 U.S. 1, 9 (1956), did not dictate a different result, because "the facts of that case are clearly distinguishable" and *Mesarosh* does "not apply to cases such as the present one, in which defendants seek a new trial under Fed. R. Crim. P. 33 because of newly discovered impeachment evidence." Pet. App. C2.

ARGUMENT

1. Petitioners contend (Pet. 8-9) that the district court erred in denying their motion for a new trial without holding a hearing. It has long been settled that a district court generally may deny a motion for a new trial without an evidentiary hearing. See, *e.g.*, *United States* v. *Winter*, 663 F.2d 1120, 1155 (1st Cir. 1981), cert. denied, 460 U.S. 1011 (1983); *United States* v. *Cardarella*, 588 F.2d 1204, 1205 (8th Cir. 1978); *United States* v. *Nace*,

561 F.2d 763, 772 (9th Cir. 1977); *United States* v. *Hamilton*, 559 F.2d 1370, 1373 (5th Cir. 1977). Moreover, petitioners concede (Pet. 8-9) that the district court's determination not to hold a hearing in this context is subject to review only under an abuse of discretion standard.

In this case, the district judge who denied the motion for a new trial was the judge who presided at petitioners' trial. After careful consideration of the materials submitted to the district court by petitioners and the government's opposing affidavits, see Pet. App. B5-B16, the court decided that resolution of any factual disputes was unnecessary to the court's determination that petitioners were not entitled to a new trial. Further review to consider whether the district court abused its discretion in reaching that decision is not warranted.

2. Petitioners contend (Pet. 11-12) that the courts below applied the wrong legal standard when evaluating the newly discovered evidence. Relying on *Larrison* v. *United States*, 24 F.2d 82, 87 (7th Cir. 1928), petitioners argue that the district court should have considered whether the newly discovered evidence that Gonzalez had previously testified falsely and Criado had falsified an autopsy report "might have caused the jury to reach a different result" rather than rejecting their motion because such evidence was "unlikely to produce a reversal."

In *Larrison*, 24 F.2d at 87, the Seventh Circuit set forth the standard to be applied to a motion for a new trial when a defendant alleges that a material witness testified falsely at trial. In such circumstances, a new trial should be granted when, *inter alia*, "[t]he court is reasonably well satisfied that the testimony given by a material witness is false [and] [t]hat without it the jury *might* have reached a different conclusion." *Ibid.*

Larrison is inapposite here, because there is no evidence that either Gonzalez or Criado testified falsely at petitioners' trial. With regard to Gonzalez's testimony, which "was limited to a discrete set of facts concerning his involvement in repairing Dominguez's gun," the district court found there is no "reasonable doubt as to [its] veracity." Pet. App. B12, B13. As the court explained, "[t]he testimony of Debra Placey, as well as * * * the gun shop business records, are independent sources of evidence of the transaction * * * concerning Dominguez's revolver." Pet. App. B13.

As to the newly discovered evidence regarding Dr. Criado, the district court found that the evidence "make[s] no suggestion that Dr. Criado perjured himself or falsified documents in connection with the autopsy he performed in this case." Pet. App. B15. Since there is no evidence that Gonzalez's or Criado's trial testimony was false, the court of appeals did not err in refusing to apply *Larrison*.

3. Petitioners argue (Pet. 16-17) that the court of appeals' decision is inconsistent with *Ouimette* v. *Moran*, 942 F.2d 1, 9-12 (1st Cir. 1991),[1] because the government in their view knowingly withheld evidence that Gonzalez had previously testified falsely, in violation of *Brady* v. *Maryland*, 373 U.S. 83 (1963).[2] Further review would not be warranted to resolve any conflict

---

[1] Petitioners also assert that the First Circuit's decision in this case is inconsistent with *United States* v. *Lau*, 828 F.2d 871 (1st Cir. 1987), cert. denied, 486 U.S. 1005 (1988). In that case, however, the First Circuit simply held that there had been no *Brady* violation because the withheld evidence was not "material" to guilt or innocence. *Id.* at 877. The First Circuit's decision in this case is entirely consistent with that holding.

[2] Petitioners have never alleged that the government withheld information regarding Dr. Criado.

between two decisions of the First Circuit. *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957). In any event, there is no such conflict in this case.

In *Ouimette*, the First Circuit applied a "strict standard of materiality" under which a new trial would be ordered so long as there was "a reasonable possibility" that the "knowing prosecutorial suppression of evidence 'could have affected the judgment of the jury.'" 942 F.2d at 11 (quoting *United States* v. *Agurs*, 427 U.S. 97, 103 (1976)). In this case, the court stated that it was applying the *Ouimette* standard. Pet. App. C2-C3. Although the court varied the wording of that standard slightly, it stated on denial of rehearing that it "[saw] no reasonable possibility that the jury which convicted petitioners would have acquitted them if Jose Gonzalez's credibility had been impeached." Pet. App. C3.[3] That holding in turn was based on the court's review of the record and on the district court's conclusion that Gonzalez's testimony was cumulative, that the newly discovered evidence was collateral to the substance of Gonzalez's trial testimony, and that Gonzalez was not an essential witness since there was "sufficient evidence for a conviction" even without him. Pet. App. B13, B11-B12. Further review is not warranted to determine whether the fact-specific conclusions reached by both courts below were correct.

---

[3] The record reflects that Gonzalez was not a key witness. In concluding that the evidence was sufficient to sustain petitioners' convictions, the court of appeals outlined six discrete areas of circumstantial evidence establishing petitioners' guilt, only one of which pertained to Dominguez's gun. *United States* v. *Maravilla*, 907 F.2d at 219. As to that area, the court focused exclusively on the testimony of Debra Placey, Dominguez's girlfriend, stating, "Dominguez asked a friend to take his gun to Miami and to have a new barrel put on the gun." *Id.* at 219.

The court of appeals' determination that petitioners were not entitled to a new trial under the *Ouimette* standard necessarily leads to the conclusion that there was no *Brady* violation. The *Ouimette* standard—whether there is "a reasonable possibility" that withholding the evidence affected the jury's verdict—is more favorable to petitioners than the standard ordinarily applicable in *Brady* cases in which there has been no showing of prosecutorial misconduct. See *United States* v. *Bagley*, 473 U.S. 667 (1985) (plurality opinion) (whether there is "a reasonable *probability* that, had the evidence been disclosed to the defense, the result of the proceeding would have been different") (emphasis added); see also *id.* at 685 (White, J., concurring in part and concurring in the judgment). In light of the district court's finding that there was no prosecutorial misconduct or deliberate withholding of evidence in this case, the court of appeals should not have given petitioners the benefit of the more favorable *Ouimette* standard.[4] In any event, since petitioners were not entitled to a new trial under the *Ouimette* standard, they are certainly not entitled to a new trial under the less favorable standard ordinarily applicable in *Brady* cases.

4. Nor are petitioners correct in asserting (Pet. 22) that the court of appeals' decision is inconsistent with

---

[4] The First Circuit in *Ouimette* held that its "strict" standard is applicable only where there is deliberate prosecutorial misconduct. See *Ouimette*, 942 F.2d at 10, 11. In this case, the district court found "that defendants have not demonstrated the existence of any misconduct on the part of the prosecutors involved in this case," Pet. App. B9, and that "[t]here is simply no evidence in the record that any of the prosecutors in this case learned of the criminal activities and investigation of Gonzalez" prior to petitioners' trial. Pet. App. B9-B10.

this Court's decision in *Mesarosh* v. *United States*, 352 U.S. 1 (1956). In *Mesarosh*, this Court remanded a case for a new trial based on the Solicitor General's representation that a witness whose testimony was material to the convictions of some of the defendants had testified falsely at other proceedings. However, as the Court in *Mesarosh* acknowledged, "[s]uch an allegation by the defense ordinarily will not support a motion for a new trial, because new evidence which is 'merely cumulative or impeaching' is not * * * an adequate basis for the grant of a new trial." *Id.* at 9. See also *id.* at 12 n.7 (situation "entirely distinct from that of the ordinary defense motion for new trial"). By its terms, therefore, *Mesarosh* has no application to this case.

In any event, the newly discovered evidence in *Mesarosh* demonstrated that a trial witness had perjured himself in other proceedings with respect to the same issues on which he had testified at trial. Indeed, the Court in *Mesarosh* noted that it might not have ordered a new trial had there been a way for the district court to find "that [the witness's] other falsehoods were differentiated from his [trial] testimony." *Id.* at 13. By contrast, in this case the district court found that Gonzalez's trial testimony was "entirely unrelated" to his previous false statements. Pet. App. B11. Nothing in *Mesarosh* suggests that a new trial is required in those circumstances.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

DEVAL L. PATRICK
Assistant Attorney General

JESSICA DUNSAY SILVER
LISA J. STARK
Attorneys

JUNE 1994